

AMENDED IN SENATE MAY 1, 2012  
AMENDED IN SENATE APRIL 16, 2012

**SENATE BILL**

**No. 1448**

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**Introduced by Senator Calderon**

February 24, 2012

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An act to amend Sections 1215, 1215.2, 1215.4, 1215.5, and 1215.6 of, to amend and renumber Sections 1215.8, 1215.9, 1215.10, 1215.11, 1215.12, 1215.13, 1215.13 ½, 1215.14, 1215.15, and 1215.16 of, and to amend, renumber, and add Section 1215.7 of, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1448, as amended, Calderon. Insurance.

(1) Existing law governs the business of insurance and authorizes the Insurance Commissioner to provide oversight over the insurance industry, including conducting investigations and bringing enforcement actions. Existing law provides that any officer, director, or employee of an insurance holding company who willfully and knowingly subscribes to, makes, or causes to be made materially false statements, reports, or filings, as specified, that involves the deliberate perpetration of a fraud upon the commissioner is guilty of a misdemeanor or a felony.

Existing law prohibits a person from making a tender offer for, or a request or invitation for tenders of, or from entering into an agreement to exchange securities for or acquire in the open market, any voting security, or any security convertible into a voting security, of a domestic insurer or of any other person controlling a domestic insurer, if the other person is not substantially engaged either directly or through its affiliates in any businesses other than that of insurance, if, as a result of the consummation thereof, the person would, directly or indirectly, acquire

control of the insurer. Existing law also prohibits a person from entering into an agreement to merge with or otherwise acquire control of a domestic insurer, unless, at the time copies of the offer, purchase, request, or invitation are first published, sent, or given to security holders or the agreement or transaction is entered into, the person has filed with the commissioner, and has sent to the insurer, a statement containing the specified information, including, among other things, information regarding the background and identity of all persons by whom or on whose behalf the purchases or the exchange, merger, or other acquisition of control are to be effected, and any additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate in the public interest or for the protection of policyholders or shareholders.

This bill would authorize the commissioner to hold a noticed public hearing after the statement described above is filed and would provide the person filing the statement with the right to present evidence, to examine witnesses, and to offer oral and written arguments. The bill would also provide for a consolidated hearing before the commissioner and commissioners from other states, as specified.

The bill would require any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer to file with the commissioner confidential notice of its proposed divestiture at least 30 days prior to the cessation of control. The bill would require the commissioner to determine those instances in which an insurer under those circumstances would be required to file for and obtain approval of the transaction. The bill would require the information to remain confidential unless the commissioner makes a specified determination.

The bill would require that the ultimate controlling person of every insurer subject to registration file an annual enterprise risk report. The bill would define “enterprise risk” for purposes of these provisions to mean any activity, circumstance, or event or series of events involving directly or indirectly one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole. The bill would authorize the commissioner to ascertain the enterprise risk to which an insurer is subjected by the ultimate controlling party or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis, and to order an insurer to produce an enterprise risk report. The bill would provide that

whenever it appears to the commissioner that any person has committed a violation of the registration requirements that prevents the full understanding of the enterprise risk to the insurer by affiliates of the insurance company holding system, the violation may serve as an independent basis for disapproving dividends or distribution or placing the insurer under an order of supervision.

(2) Existing law prohibits purchases, exchanges, mergers, or other acquisitions of control from being made until the commissioner approves those acquisitions, and requires the commissioner to approve or disapprove the transaction within 60 days after the filing of that statement.

The bill would instead require the commissioner to approve or disapprove an acquisition of control on or before the latter of 60 days after the statement has been filed with the commissioner or 30 days after the close of the hearing.

(3) Existing law requires every insurer authorized to do business in this state to register with the commissioner and to file a registration statement containing specified information, including the identity and relationship of every member of the insurance holding company system.

This bill would additionally require the registration statement to specify that the insurer's board of directors is responsible for overseeing corporate governance and internal controls, and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures. The bill would also require the insurer to include in the registration statement, if requested by the commissioner, financial statements, as described, of or within an insurance holding company system, including all affiliates.

(4) Existing law authorizes domestic insurers and commercially domiciled insurers to enter into specified transactions, including sales, loans, and reinsurance agreements, only if the insurer has notified the commissioner in writing of its intention to enter into the transactions at least 30 days prior thereto, or a shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period.

This bill would expand that requirement to apply to amendments or modifications of affiliate agreements previously filed, also make it applicable to pooling agreements, require that the notice include the reasons for the change and the financial impact on the insurer, and

require informal notice to the commissioner for determination of the type of filing required.

The bill would authorize the commissioner to participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance with the provisions described above and would require the insurer to pay for the reasonable expenses of the commissioner's participation. The bill would also authorize the commissioner to establish the supervisory college, clarify its membership, and establish a crisis management plan.

(5) Existing law requires that information reported to the commissioner in the registration statement, and information disclosed in the course of an examination or investigation of the registration statement, be exempt from subpoena or public disclosure, except as specified.

This bill would clarify that information disclosed in the course of an examination or investigation of specified transactions between registered insurers and their affiliates is exempt from subpoena or public disclosure. The bill would specify that this information and the registration statement information is not subject to disclosure pursuant to the California Public Records Act, but would authorize the commissioner to share the information with other state, federal, and international regulatory and enforcement entities if specified requirements are met. The bill would authorize the commissioner to receive documents from the National Association of Insurance Commissioners (NAIC) and regulatory and enforcement entities and to enter into agreements with the NAIC governing the sharing and use of that information, as specified.

(6) Because this bill would revise the required content of statements, filings, and reports, and require additional statements and reports, and because it would be a crime for an officer, director, or employee of an insurance holding company to willfully or knowingly engage in specified acts relative to those statements, filings, and reports, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1215 of the Insurance Code is amended to read:

1215. As used in this article, the following terms shall have the respective meanings hereinafter set forth, unless the context shall otherwise require:

(a) An “affiliate” of, or person “affiliated” with, a specific person, is a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(b) “Business day” is any day other than Saturday, Sunday, and any other day that is specified or provided for as a holiday in the Government Code.

(c) The term “control” includes the terms “controlling,” “controlled by,” and “under common control with,” and means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, more than 10 percent of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact pursuant to the filing of a disclaimer of affiliation in accordance with subdivision (l) of Section 1215.4. The commissioner may, after furnishing all persons in interest notice and opportunity to be heard, determine that control exists in fact, notwithstanding the absence of a presumption to that effect.

(d) “Enterprise risk” means any activity, circumstance, or event or series of events involving directly or indirectly one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause

1 the insurer's risk-based capital to fall into company action level  
2 as set forth in Article 4.1 (commencing with Section 739) of  
3 Chapter 1 and under Section 739.5 or would cause the insurer to  
4 be in hazardous financial condition and allow the commissioner  
5 to take such actions as necessary under Article 14 (commencing  
6 with Section 1010), Article 14.3 (commencing with Section  
7 1064.1), and Article 15.5 (commencing with Section 1077).

8 (e) An "insurance holding company system" consists of two or  
9 more affiliated persons, one or more of which is an insurer.

10 (f) "Insurer" shall have the same meaning as set forth in Section  
11 826, excluding subdivisions (e) and (f) of that section.

12 (g) "Person" is an individual, a corporation, a limited liability  
13 company, a partnership, an association, a joint stock company, a  
14 business trust, an unincorporated organization, or any similar entity,  
15 or any combination thereof acting in concert.

16 (h) A "security holder" of a specified person is the holder that  
17 owns any security of that person, including common stock,  
18 preferred stock, debt obligations, and any other security convertible  
19 into or evidencing the right to acquire any of the foregoing.

20 (i) A "subsidiary" of a specified person is an affiliate controlled  
21 by that person directly, or indirectly through one or more  
22 intermediaries.

23 (j) "Voting security" shall include any security convertible into  
24 or evidencing a right to acquire a voting security.

25 SEC. 2. Section 1215.2 of the Insurance Code is amended to  
26 read:

27 1215.2. (a) No person shall make a tender offer for, or a request  
28 or invitation for tenders of, or enter into an agreement to exchange  
29 securities for or acquire in the open market, any voting security,  
30 or any security convertible into a voting security, of a domestic  
31 insurer or of any other person controlling a domestic insurer, if  
32 the other person is not substantially engaged either directly or  
33 through its affiliates in any businesses other than that of insurance,  
34 if, as a result of the consummation thereof, the person would,  
35 directly or indirectly, acquire control of the insurer, and no person  
36 shall enter into an agreement to merge with or otherwise to acquire  
37 control of a domestic insurer, unless, at the time copies of the offer,  
38 purchase, request, or invitation are first published, sent, or given  
39 to security holders or the agreement or transaction is entered into,  
40 as the case may be, the person has filed with the commissioner,

1 and has sent to the insurer, a statement containing the following  
2 information, and any additional information as the commissioner  
3 may by rule or regulation prescribe as necessary or appropriate in  
4 the public interest or for the protection of policyholders or  
5 shareholders:

6 (1) The background and identity of all persons by whom or on  
7 whose behalf the purchases or the exchange, merger, or other  
8 acquisition of control are to be effected.

9 (2) The source and amount of the funds or other consideration  
10 used or to be used in making the purchases or in effecting the  
11 exchange, merger, or other acquisition of control, and, if any part  
12 of the funds or other consideration has been or is to be borrowed  
13 or otherwise obtained for the purpose of making the purchases or  
14 effecting the exchange, merger, or other acquisition of control, a  
15 description of the transaction and the names of the parties thereto.  
16 However, where a source of funds is a loan made in the lender's  
17 ordinary course of business, if the person filing the statement so  
18 requests, the name of the lender shall not be made available to the  
19 public.

20 (3) Any plans or proposals which those persons may have to  
21 liquidate the insurer, to sell its assets or merge it with any person,  
22 or to make any other major change in its business or corporate  
23 structure or management.

24 (4) The amount of each class of voting securities or securities  
25 which may be converted into voting securities of the insurer or the  
26 controlling person which are beneficially owned, and the amount  
27 of each class of voting securities or securities which may be  
28 converted into voting securities of the insurer or the controlling  
29 person concerning which there is a right to acquire beneficial  
30 ownership, by each person and by each affiliate of each person,  
31 together with the name and address of each affiliate.

32 (5) Information as to any contracts, arrangements, or  
33 understandings with any person with respect to any securities of  
34 the insurer or the controlling person, including, but not limited to,  
35 transfer of any of the securities, joint ventures, loan or option  
36 arrangements, puts or calls, guarantees of loans, guarantees against  
37 loss or guarantees of profits, division of losses or profits, or the  
38 giving or withholding of proxies, naming the persons with whom  
39 the contracts, arrangements, or understandings have been entered  
40 into, and giving the details thereof.

1 All requests or invitations for tenders or advertisements making  
2 a tender offer or requesting or inviting tenders of the voting  
3 securities of the insurer or the controlling person made by or on  
4 behalf of the person, and a copy of the agreement to exchange or  
5 otherwise acquire securities or to merge with or otherwise to  
6 acquire control of the insurer, shall be filed with the commissioner  
7 and sent to the insurer as a part of the statement and shall contain  
8 the information contained in the statement as the commissioner  
9 may by rule or regulation prescribe. Copies of any additional  
10 material soliciting or requesting the tender offers subsequent to  
11 the initial solicitation or request, and copies of any amendment to  
12 the agreement, shall contain the information as the commissioner  
13 may by rule or regulation prescribe as necessary or appropriate in  
14 the public interest or for the protection of policyholders or  
15 shareholders, and shall be filed with the commissioner and sent to  
16 the insurer not later than the time copies of the material are first  
17 published or sent or given to security holders or the amendment  
18 is entered into.

19 (b) If the person required to file the statement referred to in  
20 subdivision (a) is a partnership, limited partnership, syndicate, or  
21 other group, the commissioner may require that the information  
22 called for by paragraphs (1) to (5), inclusive, of subdivision (a)  
23 shall be given with respect to: (1) each partner of the partnership  
24 or limited partnership, (2) each member of the syndicate or group,  
25 and (3) each person who controls the partner or member. If a  
26 person referred to in paragraph (1), (2), or (3) of this subdivision  
27 is a corporation or the person required to file the statement referred  
28 to in subdivision (a) is a corporation, the commissioner may require  
29 that the information called for by paragraphs (1) to (5), inclusive,  
30 of subdivision (a) shall be given with respect to the corporation  
31 and each officer and director of the corporation and each person  
32 who is directly or indirectly the beneficial owner of more than 10  
33 percent of the outstanding voting securities of the corporation.

34 (c) If any tender offer, request, or invitation for tenders, or  
35 agreement to exchange or otherwise acquire securities or to merge  
36 or otherwise acquire control referred to in subdivision (a), is  
37 proposed to be made by means of a registration statement under  
38 the federal Securities Act of 1933, or in circumstances requiring  
39 the disclosure of similar information under the federal Securities  
40 Exchange Act of 1934, or under a state law requiring similar

1 registration or disclosure, the person required to file the statement  
2 referred to in subdivision (a) may file that registration statement  
3 with the commissioner as full satisfaction of the requirement in  
4 subdivision (a).

5 (d) The purchases, exchanges, mergers, or other acquisitions of  
6 control referred to in subdivision (a) may not be made until the  
7 commissioner approves the purchases, exchanges, mergers, or  
8 other acquisitions of control. The commissioner shall approve or  
9 disapprove the transaction on or before the latter of 60 days after  
10 the statement required by subdivision (a) has been filed with the  
11 commissioner or, if a hearing is held pursuant to subdivision (f),  
12 30 days after the close of the hearing held pursuant to subdivision  
13 (f). The commissioner may disapprove the transaction if the  
14 commissioner finds any of the following:

15 (1) After the change of control the domestic insurer referred to  
16 in subdivision (a) could not satisfy the requirements for the  
17 issuance of a license to write the line or lines of insurance for  
18 which it is presently licensed.

19 (2) The purchases, exchanges, mergers, or other acquisitions of  
20 control would substantially lessen competition in insurance in this  
21 state or create a monopoly therein.

22 (3) The financial condition of an acquiring person might  
23 jeopardize the financial stability of the insurer, or prejudice the  
24 interests of its policyholders.

25 (4) The plans or proposals which the acquiring person has to  
26 liquidate the insurer, to sell its assets, or to merge it with any  
27 person, or to make any other major change in its business or  
28 corporate structure or management, are not fair and reasonable to  
29 policyholders.

30 (5) The competence, experience, and integrity of those persons  
31 who would control the operation of the insurer indicate that it  
32 would not be in the interest of policyholders, or the public to permit  
33 them to do so.

34 (e) The commissioner shall require the payment of two thousand  
35 three hundred sixty dollars (\$2,360) as a fee for filing an  
36 application under this section, the amount to accompany the  
37 application.

38 (f) (1) The commissioner may hold a public hearing after the  
39 statement required by subdivision (a) is filed. If a hearing is held,  
40 at least 20 days' notice shall be given by the commissioner to the

1 person filing the statement. Not less than seven days' notice of the  
2 public hearing shall be given by the person filing the statement to  
3 the insurer and to such other persons as may be designated by the  
4 commissioner. At the hearing, the person filing the statement, the  
5 insurer, any person to whom notice of hearing was sent, and any  
6 other person whose interest may be affected, shall have the right  
7 to present evidence, examine and cross-examine witnesses, and  
8 offer oral and written arguments, and in connection therewith shall  
9 be entitled to conduct proceedings in the same manner as is  
10 presently allowed under the Administrative Procedure Act (Chapter  
11 5 (commencing with Section 11500) of Part 1 of Division 3 of  
12 Title 2 of the Government Code). All discovery proceedings shall  
13 be concluded not later than three days prior to the commencement  
14 of the public hearing.

15 (2) If the proposed acquisition of control will require the  
16 approval of more than one commissioner, the public hearing  
17 referred to in paragraph (1) may be held on a consolidated basis  
18 upon request of the person filing the statement referred to in  
19 subdivision (a). The person shall file the statement referred to in  
20 subdivision (a) with the National Association of Insurance  
21 Commissioners (NAIC) within five days of making the request  
22 for a public hearing. A commissioner may opt out of a consolidated  
23 hearing, and shall provide notice to the applicant of the opt-out  
24 within 10 days of the receipt of the statement referred to in  
25 subdivision (a). A hearing conducted on a consolidated basis shall  
26 be public and shall be held within the United States before the  
27 commissioners of the states in which the insurers are domiciled.  
28 The commissioners shall hear and receive evidence. Any  
29 commissioner may attend the hearing, in person or by  
30 telecommunication.

31 (g) This section shall not apply to any offer for or request or  
32 invitation for tenders of any voting securities, or any agreement  
33 to exchange securities for or otherwise acquire control, if the  
34 insurer whose shares are to be acquired remains a direct or indirect  
35 subsidiary of the same ultimate controlling company person within  
36 the insurer's insurance holding company system, neither the  
37 acquiring person nor any affiliate acquires or incurs any debt,  
38 guarantee, or other liability related to the transaction, and no shares  
39 are purchased by or sold to a person who is not an affiliated person  
40 in that insurance holding company system, or if, and to the extent

1 that, the commissioner, by rule or regulation or by order, exempts  
2 the offer, request, invitation, or agreement from the provisions of  
3 this section as not comprehended within the purposes thereof.

4 (h) For purposes of this section, any controlling person of a  
5 domestic insurer seeking to divest its controlling interest in the  
6 domestic insurer, in any manner, shall file with the commissioner,  
7 with a copy to the insurer, confidential notice of its proposed  
8 divestiture at least 30 days prior to the cessation of control. The  
9 commissioner shall determine those instances in which the party  
10 or parties seeking to divest a controlling interest in an insurer shall  
11 be required to file for and obtain approval of the transaction. The  
12 information shall remain confidential until the conclusion of the  
13 transaction unless the commissioner, in his or her discretion,  
14 determines that confidential treatment will interfere with  
15 enforcement of this article. If the statement referred to in  
16 subdivision (a) of Section 1215.2 is otherwise filed, this subdivision  
17 shall not apply.

18 SEC. 3. Section 1215.4 of the Insurance Code is amended to  
19 read:

20 1215.4. (a) Every insurer that is authorized to do business in  
21 this state and that is a member of an insurance holding company  
22 system shall register with the commissioner, except a foreign  
23 insurer subject to disclosure requirements and standards adopted  
24 by statute or regulation in the jurisdiction of its domicile if  
25 substantially similar to those contained in this section. The  
26 exemption from registration for those foreign insurers shall not  
27 apply to any commercially domiciled insurer within this state, as  
28 provided in Section 1215.14. Any insurer that is subject to  
29 registration under this section shall register within 60 days after  
30 the effective date of this article or 15 days after it becomes subject  
31 to registration, whichever is later, and annually thereafter by April  
32 30 of each year for the previous calendar year, unless the  
33 commissioner for good cause shown extends the time for  
34 registration. The commissioner may require a holding company  
35 system that is not subject to registration under this section to  
36 furnish a copy of the registration statement or other information  
37 filed by the insurance company with the insurance regulatory  
38 authority of domiciliary jurisdiction.

39 (b) Every insurer subject to registration shall file a registration  
40 statement with the commissioner on a form and in a format

1 prescribed by the National Association of Insurance  
2 Commissioners, which shall contain current information about the  
3 following:

4 (1) The capital structure, general financial condition, ownership,  
5 and management of the insurer and any person controlling the  
6 insurer.

7 (2) The identity and relationship of every member of the  
8 insurance holding company system.

9 (3) The following agreements in force, relationships subsisting,  
10 and transactions currently outstanding or that have occurred during  
11 the last calendar year between the insurer and its affiliates:

12 (A) Loans, extensions of credit, investments, or purchases, sales,  
13 or exchanges of securities of the affiliates by the insurer or of the  
14 insurer by its affiliates.

15 (B) Purchases, sales, or exchanges of assets.

16 (C) Transactions not in the ordinary course of business.

17 (D) Guarantees or undertakings for the benefit of an affiliate  
18 that result in an actual contingent exposure of the insurer's assets  
19 to liability, other than insurance contracts entered into in the  
20 ordinary course of the insurer's business.

21 (E) All management agreements, service contracts, and  
22 cost-sharing arrangements. However, subscription agreements or  
23 powers of attorney executed by subscribers of a reciprocal or  
24 interinsurance exchange are not required to be reported pursuant  
25 to this section if the form of the agreement was in use before 1943  
26 and was not amended in any way to modify payments, fees, or  
27 waivers of fees or otherwise substantially amended after 1943.

28 (F) Reinsurance agreements.

29 (G) Dividends and other distributions to shareholders.

30 (H) Consolidated tax allocation agreements.

31 (4) A pledge of the insurer's stock, including stock of a  
32 subsidiary or controlling affiliate, for a loan made to a member of  
33 the insurance holding company system.

34 (5) If requested by the commissioner, the insurer shall include  
35 financial statements of or within an insurance holding company  
36 system, including all affiliates. Financial statements may include,  
37 but are not limited to, annual audited financial statements filed  
38 with the United States Securities and Exchange Commission (SEC)  
39 pursuant to the federal Securities Act of 1933, as amended, or the  
40 federal Securities Exchange Act of 1934, as amended. An insurer

1 required to file financial statements pursuant to this paragraph may  
2 satisfy the request by providing the commissioner with the most  
3 recently filed parent corporation financial statements that have  
4 been filed with the SEC.

5 (6) Statements that the insurer's board of directors is responsible  
6 for overseeing corporate governance and internal controls and that  
7 the insurer's officers or senior management have approved,  
8 implemented, and continue to maintain and monitor corporate  
9 governance and internal control procedures.

10 (7) Other matters as may be included in registration forms  
11 adopted by the National Association of Insurance Commissioners,  
12 to the extent otherwise required by the commissioner.

13 (c) All registration statements shall contain a summary outlining  
14 all items in the current registration statement that are changes from  
15 the prior registration statement.

16 (d) No information need be disclosed on the registration  
17 statement filed pursuant to subdivision (b) of this section if the  
18 information is not material for the purposes of this section. Unless  
19 the commissioner provides otherwise, sales, purchases, exchanges,  
20 loans or extensions of credit, investments, or guarantees involving  
21 one-half of 1 percent or less of an insurer's admitted assets as of  
22 the preceding December 31st, are not deemed material for purposes  
23 of this section.

24 (e) Each registered insurer shall keep current the information  
25 required to be disclosed in its registration statement by reporting  
26 all material changes or additions within 15 days after the end of  
27 the month in which it learns of each change or addition.

28 (f) Subject to subdivision (g) of Section 1215.5, each registered  
29 insurer shall report all dividends and other distributions to  
30 shareholders within five business days following declaration. No  
31 dividend or other distribution to shareholders may be paid until at  
32 least 10 business days after receipt by the commissioner, at the  
33 office of the department prescribed by the commissioner by notice  
34 to all insurers, of a notice of the declaration of the dividend or  
35 other distribution.

36 (g) Every person in an insurance holding company system  
37 subject to registration is required to provide the insurer with all  
38 information reasonably necessary to enable the insurer to comply  
39 with the provisions of this article.

1 (h) The commissioner shall terminate the registration of any  
2 insurer that demonstrates that it no longer is a member of an  
3 insurance holding company system.

4 (i) The commissioner may require or allow two or more  
5 affiliated insurers subject to registration hereunder to file a  
6 consolidated registration statement or consolidated reports  
7 amending their consolidated registration statement or their  
8 individual registration statements.

9 (j) The commissioner may allow any insurer that is authorized  
10 to do business in this state that is part of an insurance holding  
11 company system to register on behalf of any affiliated insurer that  
12 is required to register under subdivision (a), and to file all  
13 information and material required to be filed under this article.

14 (k) The provisions of this section do not apply to any insurer,  
15 information, or transaction exempted by the commissioner.

16 (l) Any person may file with the commissioner a disclaimer of  
17 affiliation with any authorized insurer. A disclaimer of affiliation  
18 may be filed by an insurer or any member of an insurance holding  
19 company system. The disclaimer shall fully disclose all material  
20 relationships and bases for affiliation between the person and the  
21 insurer, as well as the basis for disclaiming an affiliation. After a  
22 disclaimer has been filed, the insurer is relieved of any duty to  
23 register or report under this section that may arise out of the  
24 insurer's relationship with the disclaimed person unless and until  
25 the commissioner disallows the disclaimer. The commissioner  
26 shall disallow the disclaimer only after furnishing all parties in  
27 interest with notice and opportunity to be heard and after making  
28 specific findings of fact to support the disallowance. If the  
29 commissioner at any time determines that the information disclosed  
30 in the disclaimer is incomplete or inaccurate, the commissioner  
31 may disallow the disclaimer.

32 (m) The ultimate controlling person of every insurer subject to  
33 registration shall also file an annual enterprise risk report. The  
34 report shall, to the best of the ultimate controlling person's  
35 knowledge and belief, identify the material risks within the  
36 insurance holding company system that could pose enterprise risk  
37 to the insurer. The report shall be filed with the lead state  
38 commissioner of another state, when applicable, of the insurance  
39 holding company system as determined by the procedures within  
40 the Financial Analysis Handbook adopted by the National

1 Association of Insurance Commissioners, and with the  
2 commissioner if the insurance holding company system has an  
3 insurer domiciled in this state. The first annual enterprise risk  
4 report shall be filed with the insurer's registration statement after  
5 July 1, 2013, unless the commissioner establishes a later date either  
6 by bulletin or notice.

7 (n) The failure to file a registration statement, summary thereof,  
8 amendment to the statement, or report of dividend required by this  
9 section within the time specified for the filing is a violation of this  
10 article.

11 SEC. 4. Section 1215.5 of the Insurance Code is amended to  
12 read:

13 1215.5. (a) Transactions by registered insurers with their  
14 affiliates are subject to the following standards:

15 (1) The terms shall be fair and reasonable.

16 (2) Charges or fees for services performed shall be reasonable.

17 (3) Expenses incurred and payment received shall be allocated  
18 to the insurer in conformity with customary insurance accounting  
19 practices consistently applied.

20 (4) The books, accounts, and records of each party to all  
21 transactions shall be so maintained as to clearly and accurately  
22 disclose the precise nature and details of the transactions, including  
23 accounting information that is necessary to support the  
24 reasonableness of the charges or fees to the parties.

25 (5) The insurer's policyholder's surplus following any dividends  
26 or distributions to shareholder affiliates shall be reasonable in  
27 relation to the insurer's outstanding liabilities and adequate to its  
28 financial needs.

29 (b) The following transactions involving a domestic insurer or  
30 commercially domiciled insurer, as defined in Section 1215.14,  
31 and any person in its insurance holding company system, including  
32 amendments or modifications of affiliate agreements previously  
33 filed pursuant to this section, may be entered into only if the insurer  
34 has notified the commissioner in writing of its intention to enter  
35 into the transaction at least 30 days prior thereto, or a shorter period  
36 as the commissioner may permit, and the commissioner has not  
37 disapproved it within that period. The notice for amendments or  
38 modifications shall include the reasons for the change and the  
39 financial impact on the domestic insurer or commercially domiciled  
40 insurer. Informal notice shall be reported, within 30 days after a

1 termination of a previously filed agreement, to the commissioner  
2 for determination of the type of filing required, if any. The  
3 commissioner shall require the payment of one thousand eight  
4 hundred eighty-nine dollars (\$1,889) as a fee for filings under this  
5 subdivision. The payment shall accompany the filing.

6 (1) Sales, purchases, exchanges, loans, extensions of credit, or  
7 investments, if the transactions are equal to or exceed:

8 (A) For a nonlife insurer, the lesser of 3 percent of the insurer's  
9 admitted assets or 25 percent of the policyholder's surplus as of  
10 the preceding December 31st.

11 (B) For a life insurer, 3 percent of the insurer's admitted assets  
12 as of the preceding December 31st.

13 (2) Loans or extensions of credit to a person who is not an  
14 affiliate, if made with the agreement or understanding that the  
15 proceeds of the transactions, in whole or in substantial part, are to  
16 be used to make loans or extensions of credit to, to purchase assets  
17 of, or to make investments in, any affiliate of the insurer, if the  
18 transactions are equal to or exceed:

19 (A) For a nonlife insurer, the lesser of 3 percent of the insurer's  
20 admitted assets or 25 percent of the policyholder's surplus as of  
21 the preceding December 31st.

22 (B) For a life insurer, 3 percent of the insurer's admitted assets  
23 as of the preceding December 31st.

24 (3) Reinsurance agreements and pooling agreements and  
25 modifications thereto in which the reinsurance premium or a  
26 change in the insurer's liabilities, or the projected reinsurance  
27 premium or a change in the insurer's liabilities in any of the next  
28 three years, equals or exceeds 5 percent of the insurer's  
29 policyholder's surplus, as of the preceding December 31st,  
30 including those agreements that may require as consideration the  
31 transfer of assets from an insurer to a nonaffiliate, if an agreement  
32 or understanding exists between the insurer and nonaffiliate that  
33 any portion of the assets will be transferred to one or more affiliates  
34 of the insurer.

35 (4) All management agreements, service contracts, tax sharing  
36 agreements, and cost-sharing arrangements. However, subscription  
37 agreements or powers of attorney executed by subscribers of a  
38 reciprocal or interinsurance exchange are not required to be  
39 reported pursuant to this section if the form of the agreement was  
40 in use before 1943 and was not amended in any way to modify

1 payments, fees, or waivers of fees or otherwise substantially  
2 amended after 1943. Payment or waiver of fees or other amounts  
3 due under subscription agreements or powers of attorney forms  
4 that were in use before 1943 and that have not been amended in  
5 any way to modify payments, fees, or waiver of fees, or otherwise  
6 substantially amended after 1943 shall not be subject to regulation  
7 pursuant to paragraph (2) of subdivision (a).

8 (5) Guarantees when initiated or made by a domestic or  
9 commercially domiciled insurer, provided that a guarantee that is  
10 quantifiable as to amount is not subject to the notice requirements  
11 of this paragraph unless it exceeds the lesser of one-half of 1  
12 percent of the insurer's admitted assets or 10 percent of surplus as  
13 regards policyholders as of the 31st day of December next  
14 preceding. Further, all guarantees that are not quantifiable as to  
15 amount are subject to the notice requirements of this paragraph.

16 (6) Derivative transactions or series of derivative transactions.  
17 The written filing to the commissioner shall include the type or  
18 types of derivative transactions, the affiliate or affiliates engaging  
19 with the insurer in the derivative transactions, the objective and  
20 the rationale for the derivative transaction or series of derivative  
21 transactions, the maximum maturity and economic effect of the  
22 derivative transactions, and any other information required by the  
23 commissioner. Derivative transactions entered into pursuant to  
24 this subdivision shall comply with the provisions of Section 1211.

25 (7) Direct or indirect acquisitions or investments in a person  
26 that controls the insurer or in an affiliate of the insurer in an amount  
27 that, together with its present holdings in those investments,  
28 exceeds 2.5 percent of the insurer's policyholder's surplus. Direct  
29 or indirect acquisitions or investments in subsidiaries acquired  
30 under Section 1215.1, or in nonsubsidiary insurance affiliates that  
31 are subject to the provisions of this article, or in subsidiaries  
32 acquired pursuant to Section 1199, are exempt from this  
33 requirement.

34 (8) Any material transactions, specified by regulation, that the  
35 commissioner determines may adversely affect the interests of the  
36 insurer's policyholders.

37 (c) A domestic insurer may not enter into transactions that are  
38 part of a plan or series of transactions with persons within the  
39 holding company system if the purpose of those transactions is to  
40 avoid the statutory threshold amount and thus avoid review. If the

1 commissioner determines that separate transactions were entered  
2 into over any 12-month period to avoid review, the commissioner  
3 may exercise his or her authority under Section 1215.11.

4 (d) The commissioner, in reviewing transactions under  
5 subdivision (b), shall consider whether the transactions comply  
6 with the standards set forth in subdivision (a) and whether they  
7 may adversely affect the interests of policyholders.

8 (e) The commissioner shall be notified within 30 days of any  
9 investment by the insurer in any one corporation if the total  
10 investment in the corporation by the insurance holding company  
11 system exceeds 10 percent of the corporation's voting securities.

12 (f) For purposes of this article, in determining whether an  
13 insurer's policyholder's surplus is reasonable in relation to the  
14 insurer's outstanding liabilities and adequate to its financial needs,  
15 the following factors, among others, shall be considered:

16 (1) The size of the insurer, as measured by its assets, capital  
17 and surplus, reserves, premium writings, insurance in force, and  
18 other appropriate criteria.

19 (2) The extent to which the insurer's business is diversified  
20 among the several lines of insurance.

21 (3) The number and size of risks insured in each line of business.

22 (4) The extent of the geographical dispersion of the insurer's  
23 insured risks.

24 (5) The nature and extent of the insurer's reinsurance program.

25 (6) The quality, diversification, and liquidity of the insurer's  
26 investment portfolio.

27 (7) The recent past and projected future trend in the size of the  
28 insurer's investment portfolio.

29 (8) The recent past and projected future trend in the size of the  
30 insurer's surplus, and the policyholder's surplus maintained by  
31 other comparable insurers.

32 (9) The adequacy of the insurer's reserves.

33 (10) The quality and liquidity of investments in subsidiaries  
34 made under Section 1215.1. The commissioner may treat any such  
35 investment as a disallowed asset for purposes of determining the  
36 adequacy of the policyholder's surplus whenever, in his or her  
37 judgment, the investment so warrants.

38 (11) The quality of the company's earnings and the extent to  
39 which the reported earnings include extraordinary accounting  
40 items.

1 (g) No insurer subject to registration under Section 1215.4 shall  
2 pay any extraordinary dividend or make any other extraordinary  
3 distribution to its stockholders until 30 days after the commissioner  
4 has received notice of the declaration thereof and has approved  
5 the payment or has not, within the 30-day period, disapproved the  
6 payment.

7 For purposes of this section, an extraordinary dividend or  
8 distribution is any dividend or distribution which, together with  
9 other dividends or distributions made within the preceding 12  
10 months, exceeds the greater of (1) 10 percent of the insurer's  
11 policyholder's surplus as of the preceding December 31st, or (2)  
12 the net gain from operations of the insurer, if the insurer is a life  
13 insurer, or the net income, if the insurer is not a life insurer, for  
14 the 12-month period ending the preceding December 31st.

15 Notwithstanding any other provision of law, an insurer may  
16 declare an extraordinary dividend or distribution that is conditional  
17 upon the commissioner's approval. The declaration confers no  
18 rights upon stockholders until the commissioner has approved the  
19 payment of the dividend or distribution or until the commissioner  
20 has not disapproved the payment within the 30-day period referred  
21 to in this subdivision.

22 (h) Notwithstanding the control of a domestic insurer by any  
23 person, the officers and directors of the insurer shall not thereby  
24 be relieved of any obligation or liability to which they would  
25 otherwise be subject to by law, and the insurer shall be managed  
26 to ensure its separate operating identity consistent with the  
27 provisions of this article. However, nothing in this article shall  
28 preclude a domestic insurer from having or sharing a common  
29 management or cooperative or joint use of personnel, property, or  
30 services with one or more other persons under arrangements  
31 meeting the standards of subdivision (a).

32 (i) The provisions of this section do not apply to any insurer,  
33 information, or transaction exempted by the commissioner.

34 SEC. 5. Section 1215.6 of the Insurance Code is amended to  
35 read:

36 1215.6. (a) Subject to the limitation contained in this section,  
37 and in addition to the powers which the commissioner has under  
38 Article 4 (commencing with Section 730) of Chapter 1 of this part  
39 relating to the examination of insurers, the commissioner shall  
40 also have the power to examine any insurer registered under

1 Section 1215.4 to ascertain the enterprise risk to which the insurer  
2 is subjected by the ultimate controlling party, or by any entity or  
3 combination of entities within the insurance holding company  
4 system, or by the insurance holding company system on a  
5 consolidated basis. The commissioner may also order any insurer  
6 registered under Section 1215.4 to produce such records, books,  
7 or other information or papers in the possession of the insurer or  
8 its affiliates, including a report on the enterprise risk to the insurer  
9 by the ultimate controlling party, or by any entity or combination  
10 of entities within the insurance holding company system, or by  
11 the insurance holding company system on a consolidated basis, as  
12 shall be necessary to ascertain the financial condition or legality  
13 of conduct of such insurer.

14 (b) The commissioner shall exercise his or her power under  
15 subdivision (a) only if the examination of the insurer under Article  
16 4 (commencing with Section 730) of Chapter 1 of this part is  
17 inadequate or the interests of the policyholders of such insurer are  
18 being adversely affected.

19 (c) The commissioner may retain at the registered insurer's  
20 expense such attorneys, actuaries, accountants, and other experts  
21 not otherwise a part of the commissioner's staff as shall be  
22 reasonably necessary to assist in the conduct of the examination  
23 under subdivision (a) of this section. Any persons so retained shall  
24 be under the direction and control of the commissioner and shall  
25 act in a purely advisory capacity.

26 (d) Each registered insurer producing for examination records,  
27 books, and papers pursuant to subdivision (a) of this section shall  
28 be liable for, and shall pay the expense of, such examination in  
29 accordance with Section 736 of this code.

30 SEC. 6. Section 1215.7 is added to the Insurance Code, to read:

31 1215.7. (a) With respect to any insurer registered under Section  
32 1215.4, and in accordance with subdivision (c), the commissioner  
33 shall also have the power to participate in a supervisory college  
34 for any domestic insurer that is part of an insurance holding  
35 company system with international operations in order to determine  
36 compliance by the insurer with this article. The powers of the  
37 commissioner with respect to supervisory colleges include, but  
38 are not limited to, the following:

39 (1) Initiating the establishment of a supervisory college.

1 (2) Clarifying the membership and participation of other  
2 supervisors in the supervisory college.

3 (3) Clarifying the functions of the supervisory college and the  
4 role of other regulators, including the establishment of a groupwide  
5 supervisor.

6 (4) Coordinating the ongoing activities of the supervisory  
7 college, including planning meetings, supervisory activities, and  
8 processes for information sharing.

9 (5) Establishing a crisis management plan.

10 (b) In order to assess the business strategy, financial position,  
11 legal and regulatory position, risk exposure, risk management, and  
12 governance processes, and as part of the examination of individual  
13 insurers in accordance with Section 1215.6, the commissioner may  
14 participate in a supervisory college with other regulators charged  
15 with supervision of the insurer or its affiliates, including other  
16 state, federal, and international regulatory agencies. A supervisory  
17 college may be convened as either a temporary or permanent forum  
18 for communication and cooperation between the regulators charged  
19 with the supervision of the insurer or its affiliates. The  
20 commissioner may enter into agreements in accordance with  
21 subdivision (b) of Section 1215.8 providing the basis for  
22 cooperation between the commissioner and the other regulatory  
23 agencies, and the activities of the supervisory college. Nothing in  
24 this section shall delegate to the supervisory college the authority  
25 of the commissioner to regulate or supervise the insurer or its  
26 affiliates within its jurisdiction.

27 (c) An insurer registered under Section 1215.4 that is subject  
28 to this section shall be liable for and shall pay the reasonable  
29 expenses of the commissioner's participation in a supervisory  
30 college pursuant to this section, including reasonable travel  
31 expenses, limited to those expenses reasonably related to the  
32 regulation of the insurer's business in this state. ~~The commissioner~~  
33 ~~may establish a regular assessment on the insurer for the payment~~  
34 ~~of these expenses.~~

35 SEC. 7. Section 1215.7 of the Insurance Code is amended and  
36 renumbered to read:

37 1215.8. (a) All information, documents, and copies thereof  
38 obtained by or disclosed to the commissioner or any other person  
39 in the course of an examination or investigation made pursuant to  
40 Sections 1215.4 and 1215.5, and all information reported pursuant

1 to Section 1215.4, shall be kept confidential, shall not be subject  
2 to disclosure pursuant to the California Public Records Act  
3 (Chapter 3.5 (commencing with Section 6250) of Division 7 of  
4 Title 1 of the Government Code), and shall not be subject to  
5 subpoena. This information shall not be made public by the  
6 commissioner or any other person except to insurance departments  
7 of other states without the prior written consent of the insurance  
8 company to which it pertains, unless the commissioner, after giving  
9 the insurer and its affiliates who would be affected thereby notice  
10 and opportunity to be heard, determines that the interests of  
11 policyholders, shareholders, or the public will be served by the  
12 publication thereof, in which event he or she may publish all or  
13 any part thereof in a manner as he or she may deem appropriate.

14 (b) In order to assist in the performance of the commissioner's  
15 duties, the commissioner:

16 (1) May, upon request, be required to share documents,  
17 materials, or other information, including the confidential and  
18 privileged documents, materials, or information subject to  
19 subdivision (a), with other state, federal, and international  
20 regulatory agencies, with the NAIC and its affiliates and  
21 subsidiaries, and with state, federal, and international law  
22 enforcement authorities, including members of any supervisory  
23 college described in Section 1215.7; provided that the recipient  
24 agrees in writing to maintain the confidentiality and privileged  
25 status of the documents, materials, or other information, and has  
26 verified in writing the legal authority to maintain confidentiality.

27 (2) Notwithstanding paragraph (1), the commissioner may only  
28 share confidential and privileged documents, material, or  
29 information reported pursuant to subdivision (m) of Section 1215.4  
30 with commissioners of states having statutes or regulations  
31 substantially similar to subdivision (a) and who have agreed in  
32 writing not to disclose the information.

33 (3) May receive documents, materials, or information, including  
34 otherwise confidential and privileged documents, materials, or  
35 information, from the NAIC and its affiliates and subsidiaries and  
36 from regulatory and law enforcement officials of other foreign or  
37 domestic jurisdictions, and shall maintain as confidential or  
38 privileged any documents, materials, or information received with  
39 notice or the understanding that it is confidential or privileged

1 under the laws of the jurisdiction that is the source of the  
2 documents, materials, or information.

3 (4) May enter into written agreements with the NAIC governing  
4 sharing and use of information provided pursuant to this  
5 subdivision consistent with this subdivision that shall do the  
6 following:

7 (A) Specify procedures and protocols regarding the  
8 confidentiality and security of information shared with the NAIC  
9 and its affiliates and subsidiaries pursuant to this subdivision,  
10 including procedures and protocols for sharing by the NAIC with  
11 other state, federal, or international regulators.

12 (B) Specify that ownership of information shared with the NAIC  
13 and its affiliates and subsidiaries pursuant to this subdivision  
14 remains with the commissioner and the NAIC's use of the  
15 information is subject to the direction of the commissioner.

16 (C) Require prompt notice to be given to an insurer whose  
17 confidential information in the possession of the NAIC pursuant  
18 to this subdivision is subject to a request or subpoena to the NAIC  
19 for disclosure or production.

20 (D) Require the NAIC and its affiliates and subsidiaries to  
21 consent to intervention by an insurer in any judicial or  
22 administrative action in which the NAIC and its affiliates and  
23 subsidiaries may be required to disclose confidential information  
24 about the insurer shared with the NAIC and its affiliates and  
25 subsidiaries pursuant to this subdivision.

26 (c) The sharing of information by the commissioner pursuant  
27 to this subdivision shall not constitute a delegation of regulatory  
28 authority or rulemaking, and the commissioner is solely responsible  
29 for the administration, execution, and enforcement of the provisions  
30 of this article.

31 (d) No waiver of any applicable privilege or claim of  
32 confidentiality in the documents, materials, or information shall  
33 occur as a result of disclosure to the commissioner under this  
34 section or as a result of sharing as authorized in subdivision (c).

35 (e) Documents, materials, or other information filed in the  
36 possession or control of the NAIC pursuant to this subdivision  
37 shall be confidential by law and privileged, shall not be subject to  
38 subpoena, and shall not be subject to discovery or admissible in  
39 evidence in any private civil action.

1 SEC. 8. Section 1215.8 of the Insurance Code is amended and  
2 renumbered to read:

3 1215.9. The commissioner may, upon notice and opportunity  
4 for all interested persons to be heard, issue such rules, regulations,  
5 and orders as shall be necessary to carry out the provisions of this  
6 article.

7 SEC. 9. Section 1215.9 of the Insurance Code is amended and  
8 renumbered to read:

9 1215.10. (a) Whenever it appears to the commissioner that  
10 any insurer or any director, officer, employee, or agent thereof has  
11 committed or is about to commit a violation of this article or of  
12 any rule, regulation, or order issued by the commissioner  
13 hereunder, the commissioner may apply to the superior court for  
14 the county in which the principal office of the insurer is located,  
15 or if such insurer has no such office in this state, then to the  
16 Superior Court for the County of Los Angeles, or for the City and  
17 County of San Francisco, for an order enjoining such insurer or  
18 such director, officer, employee, or agent thereof from violating  
19 or continuing to violate this article or any such rule, regulation, or  
20 order, and for such other equitable relief as the nature of the case  
21 and the interests of the insurer's policyholders, creditors, and  
22 shareholders or the public may require.

23 (b) No security which is the subject of any agreement or  
24 arrangement regarding acquisition, or which is acquired or to be  
25 acquired in contravention of the provisions of this article or of any  
26 rule, regulation, or order issued by the commissioner hereunder,  
27 may be voted at any shareholders' meeting, or may be counted for  
28 quorum purposes, and any action of shareholders requiring the  
29 vote of an affirmative percentage of shares may be taken as though  
30 such securities were not issued and outstanding. If an insurer or  
31 the commissioner has reason to believe that any security of the  
32 insurer has been or is about to be acquired in contravention of the  
33 provisions of this article or of any rule, regulation, or order issued  
34 by the commissioner hereunder, the insurer or the commissioner  
35 may apply to the Superior Court for the County of Los Angeles  
36 or for the City and County of San Francisco or to the superior court  
37 for the county in which the insurer has its principal place of  
38 business for equitable relief to enjoin the voting of any such  
39 security or to void any vote of such security already cast, at any  
40 meeting of shareholders.

1 SEC. 10. Section 1215.10 of the Insurance Code is amended  
2 and renumbered to read:

3 1215.11. (a) Any insurer that fails to file a statement, report,  
4 or request for approval required by this article in a timely manner  
5 shall be subject to the late filing fees set forth in Section 924.

6 (b) Every director or officer of an insurance holding company  
7 system who knowingly violates, participates in, or assents to, or  
8 who knowingly permits any of the officers or agents of the insurer  
9 to engage in transactions or make investments which have not been  
10 properly reported or submitted pursuant to Sections 1215.4 and  
11 1215.5, or which violate this article, shall pay, in their individual  
12 capacity, a civil forfeiture of not more than fifty thousand dollars  
13 (\$50,000) per violation, after notice and hearing before the  
14 commissioner. In determining the amount of the civil forfeiture,  
15 the commissioner shall take into account the appropriateness of  
16 the forfeiture with respect to the gravity of the violation, the history  
17 of previous violations, and any other matters as justice may require.

18 (c) Whenever it appears to the commissioner that any insurer  
19 subject to this article or any director, officer, employee, or agent  
20 thereof has engaged in any transaction or entered into a contract  
21 which is subject to Section 1215.5 and which would not have been  
22 approved had approval been requested, the commissioner may  
23 order the insurer to cease and desist immediately any further  
24 activity under that transaction or contract. After notice and hearing  
25 the commissioner may also order the insurer to void any contracts  
26 and restore the status quo if this action is in the best interest of the  
27 policyholders, creditors, or the public.

28 (d) Whenever it appears to the commissioner that any insurer  
29 or any director, officer, employee, or agent thereof has committed  
30 a willful violation of this article, the commissioner may cause  
31 criminal proceedings to be instituted in the county in which the  
32 principal office of the insurer is located, or if such insurer has no  
33 such office in the state then by the Attorney General against such  
34 insurer or the responsible director, officer, employee, or agent  
35 thereof. Any insurer which willfully violates this article shall be  
36 fined not more than ten thousand dollars (\$10,000). Any individual  
37 who willfully violates this article shall be fined not more than three  
38 thousand dollars (\$3,000) or, if such willful violation involves the  
39 deliberate perpetration of a fraud upon the commissioner,

1 imprisoned pursuant to subdivision (h) of Section 1170 of the Penal  
2 Code, or both.

3 (e) Whenever it appears to the commissioner that any person  
4 has committed a violation of Section 1215.4 that prevents the full  
5 understanding of the enterprise risk to the insurer by affiliates or  
6 by the insurance holding company system, the violation may serve  
7 as an independent basis for disapproving dividends or distributions  
8 or for placing the insurer under an order of supervision in  
9 accordance with Article 14 (commencing with Section 1010) of  
10 Chapter 1.

11 (f) Any officer, director, or employee of an insurance holding  
12 company system who willfully and knowingly subscribes to or  
13 makes or causes to be made any materially false statements, reports,  
14 or filings with the intent to deceive the commissioner in the  
15 performance of his or her duties under this article, upon conviction  
16 thereof, shall be fined not more than three thousand dollars (\$3,000)  
17 or, if the willful violation of this subdivision involves the deliberate  
18 perpetration of a fraud upon the commissioner, imprisoned pursuant  
19 to subdivision (h) of Section 1170 of the Penal Code, or both that  
20 imprisonment and fine. Any fines imposed shall be paid by the  
21 officer, director, or employee in his or her individual capacity.

22 SEC. 11. Section 1215.11 of the Insurance Code is amended  
23 and renumbered to read:

24 1215.12. Whenever it appears to the commissioner that any  
25 person has committed a violation of this article which so impairs  
26 the financial condition of a domestic insurer as to threaten  
27 insolvency or make the further transaction of business by it  
28 hazardous to its policyholders, creditors, shareholders, or the  
29 public, then the commissioner may proceed as provided in Article  
30 14 (commencing with Section 1010) of Chapter 1 of this part to  
31 take possession of the property of the domestic insurer and to  
32 conduct the business thereof.

33 SEC. 12. Section 1215.12 of the Insurance Code is amended  
34 and renumbered to read:

35 1215.13. Whenever it appears to the commissioner that any  
36 person has committed a violation of this article which makes the  
37 continued operation of an insurer contrary to the interests of  
38 policyholders or the public, the commissioner may, after giving  
39 notice and an opportunity to be heard, suspend, revoke, or refuse  
40 to renew that insurer's license or authority to do business in this

1 state for the period that he or she finds is required for the protection  
2 of policyholders or the public.

3 SEC. 13. Section 1215.13 of the Insurance Code is amended  
4 and renumbered to read:

5 1215.14. (a) For the purposes of this article only, every foreign  
6 insurer, except an insurer described in Article 2 (commencing with  
7 Section 12350) of Chapter 1 of Part 6 of Division 2, that is  
8 authorized to do business in this state and that, during its three  
9 preceding fiscal years taken together, or during any lesser period  
10 of time if it has been licensed to transact its business in California  
11 only for such lesser period of time, has written an average of more  
12 direct premiums in the State of California than it has written in its  
13 state of domicile during the same period, and those direct premiums  
14 written constitute 33 percent or more of its total direct premiums  
15 written everywhere in the United States for that three-year or lesser  
16 period, as reported in its three most recent annual statements, shall  
17 be deemed a “commercially domiciled insurer” within the State  
18 of California.

19 (b) The commissioner may exempt from the provisions of this  
20 article any commercially domiciled insurer made subject to this  
21 article by subdivision (a) if he or she determines that it has a  
22 sufficiently large amount of assets and the evidences of title thereto  
23 physically located in California, or that the ratio of those assets to  
24 its California policyholder liability is sufficiently large, as to justify  
25 the conclusion that there is no reasonable danger that the operations  
26 or conduct of the business of the insurer could present a danger of  
27 loss to California policyholders. The commissioner may also  
28 exempt from the provisions of this article any commercially  
29 domiciled insurer made subject to this article by subdivision (a)  
30 under the circumstances that he or she deems appropriate.

31 (c) This section does not exempt any foreign insurer that is  
32 authorized to do business in this state, including a commercially  
33 domiciled insurer, from the provisions of any other sections of this  
34 article that may be applicable to the insurer.

35 SEC. 14. Section 1215.13½ of the Insurance Code is amended  
36 and renumbered to read:

37 1215.15. (a) The provisions of this article shall not apply to  
38 any party or entity participating in any investment by a home  
39 protection company in its subsidiary or affiliate or any debt or  
40 security instruments thereof, an effectuation or attempt to effectuate

1 an acquisition of control or a liquidation of, or merger with, a home  
2 protection company, or any material transaction by a home  
3 protection company with its affiliate if the investment, effectuation,  
4 attempt, or transaction occurred prior to December 31, 1978.

5 (b) The registration required by Section 1215.4 shall first be  
6 applicable to home protection companies who are members of an  
7 insurance holding company system on January 1, 1980.

8 SEC. 15. Section 1215.14 of the Insurance Code is amended  
9 and renumbered to read:

10 1215.16. All laws and parts of laws of this state inconsistent  
11 with this article are hereby superseded with respect to matters  
12 covered by this article.

13 SEC. 16. Section 1215.15 of the Insurance Code is amended  
14 and renumbered to read:

15 1215.17. If any provision of this article or the application  
16 thereof to any person or circumstance is held invalid, the invalidity  
17 shall not affect other provisions or applications of this article which  
18 can be given effect without the invalid provision or application,  
19 and for this purpose the provisions of this article are separable.

20 SEC. 17. Section 1215.16 of the Insurance Code is amended  
21 and renumbered to read:

22 1215.18. (a) If an order for liquidation or rehabilitation of a  
23 domestic insurer has been entered, the receiver appointed under  
24 that order shall have a right to recover on behalf of the insurer (1)  
25 from any parent corporation or holding company or person or  
26 affiliate who otherwise controlled the insurer, the amount of  
27 distributions other than distributions of shares of the same class  
28 of stock paid by the insurer on its capital stock, or (2) any payment  
29 in the form of a bonus, termination settlement, or extraordinary  
30 lump sum salary adjustment made by the insurer or its subsidiary  
31 to a director, officer, or employee, where the distribution or  
32 payment pursuant to (1) or (2) is made at any time during the one  
33 year preceding the petition for liquidation, conservation, or  
34 rehabilitation, as the case may be, subject to the limitations of  
35 subdivisions (b), (c), and (d).

36 (b) No distribution shall be recoverable if the parent or affiliate  
37 shows that when paid the distribution was lawful and reasonable,  
38 and that the insurer did not know and could not reasonably have  
39 known that the distribution might adversely affect the ability of  
40 the insurer to fulfill its contractual obligations.

1 (c) Any person who was a parent corporation or holding  
2 company or a person who otherwise controlled the insurer or  
3 affiliate at the time the distributions were paid shall be liable up  
4 to the amount of distributions or payments under subdivision (a)  
5 that the person received. Any person who otherwise controlled the  
6 insurer at the time the distributions were declared shall be liable  
7 up to the amount of distributions he or she would have received  
8 if they had been paid immediately. If two or more persons are  
9 liable with respect to the same distributions, they shall be jointly  
10 and severally liable.

11 (d) The maximum amount recoverable under this section shall  
12 be the amount needed in excess of all other available assets of the  
13 impaired or insolvent insurer to pay the contractual obligations of  
14 the impaired or insolvent insurer and to reimburse any guaranty  
15 funds.

16 (e) To the extent that any person liable under subdivision (c) is  
17 insolvent or otherwise fails to pay claims due from it pursuant to  
18 that subdivision, its parent corporation or holding company or  
19 person who otherwise controlled it at the time the distribution was  
20 paid, shall be jointly and severally liable for any resulting  
21 deficiency in the amount recovered from the parent corporation  
22 or holding company or person who otherwise controlled it.

23 SEC. 18. No reimbursement is required by this act pursuant to  
24 Section 6 of Article XIII B of the California Constitution because  
25 the only costs that may be incurred by a local agency or school  
26 district will be incurred because this act creates a new crime or  
27 infraction, eliminates a crime or infraction, or changes the penalty  
28 for a crime or infraction, within the meaning of Section 17556 of  
29 the Government Code, or changes the definition of a crime within  
30 the meaning of Section 6 of Article XIII B of the California  
31 Constitution.